

AMENDED IN SENATE JULY 13, 2011

AMENDED IN ASSEMBLY APRIL 12, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 408

Introduced by Assembly Members Wieckowski, Logue, and Miller

February 14, 2011

An act to amend ~~Sections 13009.6, 25160.2, and 25503.5 of the Health and Safety Code, and to amend Section 13385 of the Water Code, relating to the environment~~ *Sections 13009.6, 25160.2, 25210.6, 25404, 25404.2, 25503.5, 25509, and 25509.2 of the Health and Safety Code, relating to hazardous substances*, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 408, as amended, Wieckowski. Hazardous substances and materials: hazardous waste—~~transportation: water discharges: transportation.~~

(1) Existing law provides that the expense of a public agency's emergency response to the release, escape, or burning of hazardous substances is a charge against the person whose negligence caused the incident; if the incident necessitated an evacuation beyond the property of origin or results in the spread of hazardous substances or fire beyond the property of origin. Existing law defines "hazardous substance" for purposes of these provisions.

This bill would instead provide that these expenses are a charge against the person whose negligence caused the incident if the incident necessitated an evacuation from the building, structure, property, or public right-of-way where the incident originates, or the incident results

in the spread of hazardous substances or fire beyond the building, structure, property, or public right-of-way where the incident originates. The bill would also revise the definition of “hazardous substance” for purposes of these provisions.

(2) Existing law requires any person generating hazardous waste that is transported, or submitted for transportation, for offsite handling, treatment, storage, disposal, or any combination thereof, to complete a manifest and establishes a procedure for a consolidated manifest, to be used by generators and transporters for certain types of hazardous waste. A generator using the consolidated manifesting procedure is required to meet specified requirements, including having an identification number. A violation of the hazardous waste control laws is a crime.

This bill would allow the consolidating manifesting procedure to be used for the receipt, by a transporter, of one shipment of used oil from a generator whose identification number has been suspended, if certain requirements are met. The bill would provide that this exemption would become inoperative on and after January 1, 2014. Since a violation of these requirements would be a crime, the bill would impose a state-mandated local program.

(3) Existing law requires a business that handles a hazardous material to adopt a business plan for response to the release of hazardous materials, and to annually submit an inventory to the local administering agency if the business handles a specified amount of hazardous materials at any one time during the reporting year.

This bill would additionally require a business to adopt the plan or inventory for specified lesser or greater amounts of various classes of hazardous materials if the hazardous materials meet certain requirements. The administering agency would be required to make findings regarding the regulation of certain of these hazardous materials in consultation with the local fire chief. The bill would impose a state-mandated local program by imposing new duties upon administering agencies with regard to business plans.

~~(4) Under existing law, the State Water Resources Control Board and the California regional water quality control boards prescribe waste discharge requirements in accordance with the federal Clean Water Act and the Porter-Cologne Water Quality Control Act (state act). The state act, with certain exceptions, imposes a mandatory minimum penalty of \$3,000 for each serious waste discharge violation, as defined, and for certain other described violations if those violations occur 4 or more times in any period of 6 consecutive months.~~

~~The state act authorizes the state board or a regional board, in lieu of assessing all or a portion of the mandatory minimum penalties against a publicly owned treatment works (POTW) that serves a small community, to elect to require that POTW spend an equivalent amount toward the completion of a compliance project. The state act defines a POTW that serves a small community to mean, in pertinent part, a POTW serving a community of 10,000 persons or fewer.~~

~~This bill would expand that definition to include a POTW serving a community of 20,000 persons or fewer.~~

The bill would make conforming changes regarding the California Fire Code to provisions regarding the unified hazardous waste and hazardous materials management regulatory program and the business plan requirements.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

(6) The bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13009.6 of the Health and Safety Code
2 is amended to read:
3 13009.6. (a) (1) Those expenses of an emergency response
4 necessary to protect the public from a real and imminent threat to
5 health and safety by a public agency to confine, prevent, or mitigate
6 the release, escape, or burning of hazardous substances described
7 in subdivision (c) are a charge against any person whose negligence
8 causes the incident, if either of the following occurs:
9 (A) Evacuation from the building, structure, property, or public
10 right-of-way where the incident originates is necessary to prevent
11 loss of life or injury.
12 (B) The incident results in the spread of hazardous substances
13 or fire posing a real and imminent threat to public health and safety
14 beyond the building, structure, property, or public right-of-way
15 where the incident originates.

(2) Expenses reimbursable to a public agency under this section are a debt of the person liable therefor, and shall be collectible in the same manner as in the case of an obligation under contract, express or implied.

(3) The charge created against the person by this subdivision is also a charge against the person's employer if the negligence causing the incident occurs in the course of the person's employment.

(4) The public agencies participating in an emergency response meeting the requirements of paragraph (1) of this subdivision may designate one or more of the participating agencies to bring an action to recover the expenses incurred by all of the designating agencies which are reimbursable under this section.

(5) An action to recover expenses under this section may be joined with any civil action for penalties, fines, injunctive, or other relief brought against the responsible person or employer, or both, arising out of the same incident.

(b) There shall be deducted from any amount otherwise recoverable under this section, the amount of any reimbursement for eligible costs received by a public agency pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20. The amount so reimbursed may be recovered as provided in Section 25360.

(c) As used in this section, "hazardous substance" means any hazardous substance listed in Section 25316 or subdivision (q) of Section 25501 of this code, or in Section 6382 of the Labor Code.

(d) As used in this section, "mitigate" includes actions by a public agency to monitor or model ambient levels of airborne hazardous substances for the purpose of determining or assisting in the determination of whether or not to evacuate areas around the property where the incident originates, or to determine or assist in the determination of which areas around the property where the incident originates should be evacuated.

SEC. 2. Section 25160.2 of the Health and Safety Code is amended to read:

25160.2. (a) In lieu of the procedures prescribed by Sections 25160 and 25161, transporters and generators of hazardous waste meeting the conditions in this section may use the consolidated manifesting procedure set forth in subdivision (b) to consolidate shipments of waste streams identified in subdivision (c) collected from multiple generators onto a single consolidated manifest.

(b) The following consolidated manifesting procedure may be used only for non-RCRA hazardous waste or for RCRA hazardous waste that is not required to be manifested pursuant to the federal act or the federal regulations adopted pursuant to the federal act and transported by a registered hazardous waste transporter, and used only with the consent of the generator:

(1) A separate manifest shall be completed by each vehicle driver, with respect to each transport vehicle operated by that driver for each date.

(2) The transporter shall complete both the generator's and the transporter's section of the manifest using the transporter's name, identification number, terminal address, and telephone number. The generator's and transporter's sections shall be completed prior to commencing each day's collections. The driver shall sign and date the generator's and transporter's sections of the manifest.

(3) The transporter shall attach to the front of the manifest legible receipts for each quantity of hazardous waste that is received from a generator. The receipts shall be used to determine the total volume of hazardous waste in the vehicle. After the hazardous waste is delivered, the receipts shall be affixed to the transporter's copy of the manifest. The transporter shall leave a copy of the receipt with the generator of the hazardous waste. The generator shall retain each receipt for at least three years. This period of retention is extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the department or a certified unified program agency.

(4) All copies of each receipt shall contain all of the following information:

(A) The name, address, identification number, contact person, and telephone number of the generator, and the signature of the generator or the generator's representative.

(B) The date of the shipment.

(C) The manifest number.

(D) The volume or quantity of each waste stream received, its California and RCRA waste codes, the waste stream type listed in subdivision (c), and its proper shipping description, including the hazardous class and United Nations/North America (UN/NA) identification number, if applicable.

1 (E) The name, address, and identification number of the
2 authorized facility to which the hazardous waste will be
3 transported.

4 (F) The transporter's name, address, and identification number.

5 (G) The driver's signature.

6 (H) A statement, signed by the generator, certifying that the
7 generator has established a program to reduce the volume or
8 quantity and toxicity of the hazardous waste to the degree, as
9 determined by the generator, to be economically practicable.

10 (5) The transporter shall enter the total volume or quantity of
11 each waste stream transported on the manifest at the change of
12 each date, change of driver, or change of transport vehicle. The
13 total volume or quantity shall be the cumulative amount of each
14 waste stream collected from the generators listed on the individual
15 receipts. In lieu of submitting a copy of each manifest used, a
16 facility operator may submit an electronic report to the department
17 meeting the requirements of Section 25160.3.

18 (6) The transporter shall submit the generator copy of the
19 manifest to the department within 30 days of each shipment.

20 (7) The transporter shall retain a copy of the manifest and all
21 receipts for each manifest at a location within the state for three
22 years. This period of retention is extended automatically during
23 the course of any unresolved enforcement action regarding the
24 regulated activity or as requested by the department or a certified
25 unified program agency.

26 (8) The transporter shall submit all copies of the manifest to the
27 designated facility. A representative of the designated facility that
28 receives the hazardous waste shall sign and date the manifest,
29 return two copies to the transporter, retain one copy, and send the
30 original to the department within 30 days.

31 (9) All other manifesting requirements of Sections 25160 and
32 25161 shall be complied with unless specifically exempted under
33 this section. If an out-of-state receiving facility is not required to
34 submit the signed manifest copy to the department, the consolidated
35 transporter, acting as generator, shall submit a copy of the manifest
36 signed by the receiving facility to the department pursuant to
37 paragraph (3) of subdivision (b) of Section 25160.

38 (10) Except as provided by subdivision (e), each generator using
39 the consolidated manifesting procedure shall have an identification
40 number, unless exempted from manifesting requirements by action

1 of Section 25143.13 for generators of photographic waste less than
2 100 kilograms per calendar month.

3 (c) The consolidated manifesting procedure set forth in
4 subdivision (b) may be used only for the following waste streams
5 and in accordance with the conditions specified below for each
6 waste stream:

7 (1) Used oil and the contents of an oil/water separator, if the
8 separator is a catch basin, clarifier, or similar collection device
9 that is used to collect water containing residual amounts of one or
10 more of the following: used oil, antifreeze, or other substances and
11 contaminants associated with activities that generate used oil and
12 antifreeze.

13 (2) The wastes listed in subparagraph (A) may be manifested
14 under the procedures specified in this section only if all of the
15 requirements specified in subparagraphs (B) and (C) are satisfied.

16 (A) Wastes eligible for consolidated manifesting:

17 (i) Solids contaminated with used oil.

18 (ii) Brake fluid.

19 (iii) Antifreeze.

20 (iv) Antifreeze sludge.

21 (v) Parts cleaning solvents, including aqueous cleaning solvents.

22 (vi) Hydroxide sludge contaminated solely with metals from a
23 wastewater treatment process.

24 (vii) "Paint-related" wastes, including paints, thinners, filters,
25 and sludges.

26 (viii) Spent photographic solutions.

27 (ix) Dry cleaning solvents (including perchloroethylene,
28 naphtha, and silicone based solvents).

29 (x) Filters, lint, and sludges contaminated with dry cleaning
30 solvent.

31 (xi) Asbestos and asbestos-containing materials.

32 (xii) Inks from the printing industry.

33 (xiii) Chemicals and laboratory packs collected from K-12
34 schools.

35 (xiv) Absorbents contaminated with other wastes listed in this
36 section.

37 (xv) Filters from dispensing pumps for diesel and gasoline fuels.

38 (xvi) Any other waste, as specified in regulations adopted by
39 the department.

1 (B) The generator does not generate more than 1,000 kilograms
2 per calendar month of hazardous waste and meets the conditions
3 of paragraph (1) of subdivision (h) of Section 25123.3. For the
4 purpose of calculating the 1,000 kilograms per calendar month
5 limit described in this section, the generator may exclude the
6 volume of used oil and the contents of the oil/water separator that
7 is managed pursuant to paragraph (1) of subdivision (c).

8 (C) (i) The generator enters into an agreement with the
9 transporter in which the transporter agrees that the transporter will
10 submit a confirmation to the generator that the hazardous waste
11 was transported to an authorized hazardous waste treatment facility
12 for appropriate treatment. The agreement may provide that the
13 hazardous waste will first be transported to a storage or transfer
14 facility in accordance with the applicable provisions of law.

15 (ii) The treatment requirement specified in clause (i) does not
16 apply to asbestos, asbestos-containing materials, and chemicals
17 and laboratory packs collected from K–12 schools, or any other
18 waste stream for which the department determines there is no
19 reasonably available treatment methodology or facility. These
20 wastes shall be transported to an authorized facility.

21 (d) Transporters using the consolidated manifesting procedure
22 set forth in this section shall submit quarterly reports to the
23 department 30 days after the end of each quarter. The first quarterly
24 report shall be submitted on October 31, 2002, covering the July
25 to September 2002 period, and every three months thereafter.
26 Except as otherwise specified in paragraph (1), the quarterly report
27 shall be submitted in an electronic format provided by the
28 department.

29 The department shall make all of the information in the quarterly
30 reports submitted pursuant to this subdivision available to the
31 public, through its usual means of disclosure, except the department
32 shall not disclose the association between any specific transporter
33 and specific generator. The list of generators served by a transporter
34 shall be deemed to be a trade secret and confidential business
35 information for purposes of Section 25173 and Section 66260.2
36 of Title 22 of the California Code of Regulations.

37 (1) Transporters that use the consolidated manifesting procedure
38 for less than 1,000 tons per calendar year may apply to the
39 department to continue submitting paper format reports.

(2) For each transporter's name, terminal address, and identification number, the quarterly report shall include the following information for each generator for each consolidated manifest:

(A) The name, address, and identification number, the contact persons's name, and the telephone number of each generator.

(B) The date of the shipment.

(C) The manifest number.

(D) The volume or quantity of each waste stream received, its California and RCRA waste code, and the waste stream category listed in subdivision (c).

~~(e) (1) Notwithstanding paragraph (10) of subdivision (a), the consolidated manifesting procedure may be used for the receipt, by a transporter, of one shipment of used oil from a generator whose identification number has been suspended for a violation of Section 25205.16, if all of the following requirements are met:~~

~~(A) The transporter verifies that the identification number was suspended for a violation of Section 25205.16.~~

~~(B) The generator notifies the department within 24 hours that the transporter accepted the shipment.~~

~~(C) The transporter notifies the department within 24 hours that it accepted the shipment from the generator.~~

~~(D) The generator complies with Section 25205.16 within 30 days from the date the transporter accepts the shipment.~~

~~(2) This subdivision shall become inoperative on and after January 1, 2014.~~

(e) (1) A transporter may accept and include on a consolidated manifest a maximum of one shipment of used oil from a generator whose identification number has been suspended for a violation of Section 25205.16.

(2) If a transporter accepts a shipment of used oil pursuant to paragraph (1), the transporter shall do both of the following:

(A) Verify that the generator's identification number was suspended for a violation of Section 25205.16.

(B) Notify the department within 24 hours that it accepted the shipment from the generator.

(3) If a generator offers a shipment of used oil to a transporter pursuant to paragraph (1), the generator shall do both of the following:

1 (A) Notify the department within 24 hours that a transporter
2 accepted a shipment.

3 (B) Comply with Section 25205.16 within 30 days from the date
4 the transporter accepted the shipment.

5 (4) This subdivision shall become inoperative on and after
6 January 1, 2014.

7 SEC. 3. Section 25210.6 of the Health and Safety Code is
8 amended to read:

9 25210.6. (a) On or before December 31, 2005, the department
10 shall adopt regulations specifying the best management practices
11 for a person managing perchlorate materials. These practices may
12 include, but are not limited to, all of the following:

13 (1) Procedures for documenting the amount of perchlorate
14 materials managed by the facility.

15 (2) Management practices necessary to prevent releases of
16 perchlorate materials, including, but not limited to, containment
17 standards, usage, processing and transferring practices, and spill
18 response procedures.

19 (b) (1) The department shall consult with the State Air
20 Resources Board, the Office of Environmental Health Hazard
21 Assessment, the State Water Resources Control Board, the
22 California Emergency Management Agency, the State Fire
23 Marshal, and the California certified unified program agencies
24 forum before adopting regulations pursuant to subdivision (a).

25 (2) The department shall also, before adopting regulations
26 pursuant to subdivision (a), review existing federal, state, and local
27 laws governing the management of perchlorate materials to
28 determine the degree to which uniform and adequate requirements
29 already exist, so as to avoid any unnecessary duplication of, or
30 interference with the application of, those existing requirements.

31 (3) In adopting regulations pursuant to subdivision (a), the
32 department shall ensure that those regulations are at least as
33 stringent as, and to the extent practical consistent with, the existing
34 requirements of Chapter 6.95 (commencing with Section 25500)
35 and the ~~Uniform~~ California Fire Code governing the management
36 of perchlorate materials.

37 (c) The regulations adopted by the department pursuant to this
38 section shall be adopted as emergency regulations in accordance
39 with Chapter 3.5 (commencing with Section 11340) of Part 1 of
40 Division 3 of Title 2 of the Government Code, and for the purposes

1 of that chapter, including Section 11349.6 of the Government
2 Code, the adoption of these regulations is an emergency and shall
3 be considered by the Office of Administrative Law as necessary
4 for the immediate preservation of the public peace, health and
5 safety, and general welfare. Notwithstanding Chapter 3.5
6 (commencing with Section 11340) of Part 1 of Division 3 of Title
7 2 of the Government Code, including subdivision (e) of Section
8 11346.1 of the Government Code, any emergency regulations
9 adopted pursuant to this section shall be filed with, but not be
10 repealed by, the Office of Administrative Law and shall remain
11 in effect until revised by the department.

12 (d) The department may implement an outreach effort to educate
13 persons who manage perchlorate materials concerning the
14 regulations promulgated pursuant to subdivision (a).

15 *SEC. 4. Section 25404 of the Health and Safety Code is*
16 *amended to read:*

17 25404. (a) For purposes of this chapter, the following terms
18 shall have the following meanings:

19 (1) (A) “Certified Unified Program Agency” or “CUPA” means
20 the agency certified by the secretary to implement the unified
21 program specified in this chapter within a jurisdiction.

22 (B) “Participating Agency” or “PA” means a state or local
23 agency that has a written agreement with the CUPA pursuant to
24 subdivision (d) of Section 25404.3, and is approved by the
25 secretary, to implement or enforce one or more of the unified
26 program elements specified in subdivision (c), in accordance with
27 Sections 25404.1 and 25404.2.

28 (C) “Unified Program Agency” or “UPA” means the CUPA, or
29 its participating agencies to the extent each PA has been designated
30 by the CUPA, pursuant to a written agreement, to implement or
31 enforce a particular unified program element specified in
32 subdivision (c). The UPAs have the responsibility and authority
33 to implement and enforce the requirements listed in subdivision
34 (c), and the regulations adopted to implement the requirements
35 listed in subdivision (c), to the extent provided by Chapter 6.5
36 (commencing with Section 25100), Chapter 6.67 (commencing
37 with Section 25270), Chapter 6.7 (commencing with Section
38 25280), Chapter 6.95 (commencing with Section 25500), and
39 Sections 25404.1 and 25404.2. After a CUPA has been certified
40 by the secretary, the unified program agencies and the state

1 agencies carrying out responsibilities under this chapter shall be
2 the only agencies authorized to enforce the requirements listed in
3 subdivision (c) within the jurisdiction of the CUPA.

4 (2) “Department” means the Department of Toxic Substances
5 Control.

6 (3) “Minor violation” means the failure of a person to comply
7 with a requirement or condition of an applicable law, regulation,
8 permit, information request, order, variance, or other requirement,
9 whether procedural or substantive, of the unified program that the
10 UPA is authorized to implement or enforce pursuant to this chapter,
11 and that does not otherwise include any of the following:

12 (A) A violation that results in injury to persons or property, or
13 that presents a significant threat to human health or the
14 environment.

15 (B) A knowing, willful, or intentional violation.

16 (C) A violation that is a chronic violation, or that is committed
17 by a recalcitrant violator. In determining whether a violation is
18 chronic or a violator is recalcitrant, the UPA shall consider whether
19 there is evidence indicating that the violator has engaged in a
20 pattern of neglect or disregard with respect to applicable regulatory
21 requirements.

22 (D) A violation that results in an emergency response from a
23 public safety agency.

24 (E) A violation that enables the violator to benefit economically
25 from the noncompliance, either by reduced costs or competitive
26 advantage.

27 (F) A class I violation as provided in Section 25117.6.

28 (G) A class II violation committed by a chronic or a recalcitrant
29 violator, as provided in Section 25117.6.

30 (H) A violation that hinders the ability of the UPA to determine
31 compliance with any other applicable local, state, or federal rule,
32 regulation, information request, order, variance, permit, or other
33 requirement.

34 (4) “Secretary” means the Secretary for Environmental
35 Protection.

36 (5) “Unified program facility” means all contiguous land and
37 structures, other appurtenances, and improvements on the land
38 that are subject to the requirements listed in subdivision (c).

39 (6) “Unified program facility permit” means a permit issued
40 pursuant to this chapter. For the purposes of this chapter, a unified

1 program facility permit encompasses the permitting requirements
2 of Section 25284, and permit or authorization requirements under
3 a local ordinance or regulation relating to the generation or
4 handling of hazardous waste or hazardous materials, but does not
5 encompass the permitting requirements of a local ordinance that
6 incorporates provisions of the ~~Uniform~~ *California* Fire Code or
7 the ~~Uniform~~ *California* Building Code.

8 (b) The secretary shall adopt implementing regulations and
9 implement a unified hazardous waste and hazardous materials
10 management regulatory program, which shall be known as the
11 unified program, after holding an appropriate number of public
12 hearings throughout the state. The unified program shall be
13 developed in close consultation with the director, the Secretary of
14 California Emergency Management, the State Fire Marshal, the
15 executive officers and chairpersons of the State Water Resources
16 Control Board and the California regional water quality control
17 boards, the local health officers, local fire services, and other
18 appropriate officers of interested local agencies, and affected
19 businesses and interested members of the public, including
20 environmental organizations.

21 (c) The unified program shall consolidate the administration of
22 the following requirements and, to the maximum extent feasible
23 within statutory constraints, shall ensure the coordination and
24 consistency of any regulations adopted pursuant to those
25 requirements:

26 (1) (A) Except as provided in subparagraphs (B) and (C), the
27 requirements of Chapter 6.5 (commencing with Section 25100),
28 and the regulations adopted by the department pursuant thereto,
29 *that* are applicable to all of the following:

30 (i) Hazardous waste generators, persons operating pursuant to
31 a permit-by-rule, conditional authorization, or conditional
32 exemption, pursuant to Chapter 6.5 (commencing with Section
33 25100) or the regulations adopted by the department.

34 (ii) Persons managing perchlorate materials.

35 (iii) Persons subject to Article 10.1 (commencing with Section
36 25211) of Chapter 6.5.

37 (B) The unified program shall not include the requirements of
38 paragraph (3) of subdivision (c) of Section 25200.3, the
39 requirements of Sections 25200.10 and 25200.14, and the authority
40 to issue an order under Sections 25187 and 25187.1, with regard

- 1 to those portions of a unified program facility that are subject to
2 one of the following:
- 3 (i) A corrective action order issued by the department pursuant
4 to Section 25187.
- 5 (ii) An order issued by the department pursuant to Chapter 6.8
6 (commencing with Section 25300) or Chapter 6.85 (commencing
7 with Section 25396).
- 8 (iii) A remedial action plan approved pursuant to Chapter 6.8
9 (commencing with Section 25300) or Chapter 6.85 (commencing
10 with Section 25396).
- 11 (iv) A cleanup and abatement order issued by a California
12 regional water quality control board pursuant to Section 13304 of
13 the Water Code, to the extent that the cleanup and abatement order
14 addresses the requirements of the applicable section or sections
15 listed in this subparagraph.
- 16 (v) Corrective action required under subsection (u) of Section
17 6924 of Title 42 of the United States Code or subsection (h) of
18 Section 6928 of Title 42 of the United States Code.
- 19 (vi) An environmental assessment pursuant to Section 25200.14
20 or a corrective action pursuant to Section 25200.10 or paragraph
21 (3) of subdivision (c) of Section 25200.3, that is being overseen
22 by the department.
- 23 (C) The unified program shall not include the requirements of
24 Chapter 6.5 (commencing with Section 25100), and the regulations
25 adopted by the department pursuant thereto, applicable to persons
26 operating transportable treatment units, except that any required
27 notice regarding transportable treatment units shall also be provided
28 to the CUPAs.
- 29 (2) The requirements of Chapter 6.67 (commencing with Section
30 25270) concerning aboveground storage tanks.
- 31 (3) (A) Except as provided in subparagraphs (B) and (C), the
32 requirements of Chapter 6.7 (commencing with Section 25280)
33 concerning underground storage tanks and the requirements of any
34 underground storage tank ordinance adopted by a city or county.
- 35 (B) The unified program shall not include the responsibilities
36 assigned to the State Water Resources Control Board pursuant to
37 Section 25297.1.
- 38 (C) The unified program shall not include the corrective action
39 requirements of Sections 25296.10 to 25296.40, inclusive.

1 (4) The requirements of Article 1 (commencing with Section
2 25500) of Chapter 6.95 concerning hazardous material release
3 response plans and inventories.

4 (5) The requirements of Article 2 (commencing with Section
5 25531) of Chapter 6.95, concerning the accidental release
6 prevention program.

7 (6) The requirements of ~~subdivisions (b) and (c) of Section~~
8 ~~80.103 Sections 2701.5.1 and 2701.5.2 of the Uniform California~~
9 Fire Code, as adopted by the State Fire Marshal pursuant to Section
10 13143.9 concerning hazardous material management plans and
11 inventories.

12 (d) To the maximum extent feasible within statutory constraints,
13 the secretary shall consolidate, coordinate, and make consistent
14 these requirements of the unified program with other requirements
15 imposed by other federal, state, regional, or local agencies upon
16 facilities regulated by the unified program.

17 (e) (1) The secretary shall establish standards applicable to
18 CUPAs, participating agencies, state agencies, and businesses
19 specifying the data to be collected and submitted by unified
20 program agencies in administering the programs listed in
21 subdivision (c). Those standards shall incorporate any standard
22 developed under Section 25503.3.

23 (2) (A) No later than January 1, 2010, the secretary shall
24 establish a statewide information management system capable of
25 receiving all data collected by the unified program agencies and
26 reported by regulated businesses pursuant to this subdivision and
27 Section 25504.1, in a manner that is most cost efficient and
28 effective for both the regulated businesses and state and local
29 agencies. The secretary shall prescribe an XML or other compatible
30 Web-based format for the transfer of data from CUPAs and
31 regulated businesses and make all nonconfidential data available
32 on the Internet.

33 (B) The secretary shall establish milestones to measure the
34 implementation of the statewide information management system
35 and shall provide periodic status updates to interested parties.

36 (3) (A) (i) Except as provided in subparagraph (B), in addition
37 to any other funding that becomes available, the secretary shall
38 increase the oversight surcharge provided for in subdivision (b)
39 of Section 25404.5 by an amount necessary to meet the
40 requirements of this subdivision for a period of three years, to

1 establish the statewide information management system, consistent
2 with paragraph (2). The increase in the oversight surcharge shall
3 not exceed twenty-five dollars (\$25) in any one year of the
4 three-year period. The secretary shall thereafter maintain the
5 statewide information management system, funded by the
6 assessment the secretary is authorized to impose pursuant to
7 Section 25404.5.

8 (ii) No less than 75 percent of the additional funding raised
9 pursuant to clause (i) shall be provided to CUPAs and PAs through
10 grant funds or statewide contract services, in the amounts
11 determined by the secretary to assist these local agencies in meeting
12 these information management system requirements.

13 (B) A facility that is owned or operated by the federal
14 government and that is subject to the unified program shall pay
15 the surcharge required by this paragraph to the extent authorized
16 by federal law.

17 (C) The secretary, or one or more of the boards, departments,
18 or offices within the California Environmental Protection Agency,
19 shall seek available federal funding for purposes of implementing
20 this subdivision.

21 (4) No later than three years after the statewide information
22 management system is established, each CUPA, PA, and regulated
23 business shall report program data electronically. The secretary
24 shall work with the CUPAs to develop a phased in schedule for
25 the electronic collection and submittal of information to be included
26 in the statewide information management system, giving first
27 priority to information relating to those chemicals determined by
28 the secretary to be of greatest concern. The secretary, in making
29 this determination shall consult with the CUPAs, the California
30 Emergency Management Agency, the State Fire Marshal, and the
31 boards, departments, and offices within the California
32 Environmental Protection Agency. The information initially
33 included in the statewide information management system shall
34 include, but is not limited to, the hazardous materials inventory
35 information required to be submitted pursuant to Section 25504.1
36 for perchlorate materials.

37 (5) The secretary, in collaboration with the CUPAs, shall provide
38 technical assistance to regulated businesses to comply with the
39 electronic reporting requirements and may expend funds identified
40 in clause (i) of subparagraph (A) of paragraph (3) for that purpose.

1 *SEC. 5. Section 25404.2 of the Health and Safety Code is*
2 *amended to read:*

3 25404.2. (a) The unified program agencies in each jurisdiction
4 shall do all of the following:

5 (1) (A) The certified unified program agency shall develop and
6 implement a procedure for issuing, to a unified program facility,
7 a unified program facility permit ~~which that~~ would replace any
8 permit required by Section 25284 and any permit or authorization
9 required under any local ordinance or regulation relating to the
10 generation or handling of hazardous waste or hazardous materials,
11 but ~~which that~~ would not replace a permit issued pursuant to a
12 local ordinance ~~which that~~ incorporates provisions of the ~~Uniform~~
13 California Fire Code and ~~Uniform~~ California Building Code.

14 (B) The unified program facility permit, and, if applicable, an
15 authorization to operate pursuant to a permit-by-rule, conditional
16 authorization, or conditional exemption, pursuant to Chapter 6.5
17 (commencing with Section 25100) or the regulations adopted by
18 the department, are the only grants of authorization required under
19 the unified program elements specified in subdivision (c) of Section
20 25404.

21 (C) The unified program agencies shall enforce the elements of
22 a unified program facility permit in the same manner as the permits
23 replaced by the unified program facility permit would be enforced.

24 (D) If a unified program facility is operating pursuant to the
25 applicable grants of authorization ~~which that~~ would otherwise be
26 included in a unified program facility permit for the activities in
27 which the facility is engaged, the unified program agencies shall
28 not require that unified program facility to obtain a unified program
29 facility permit as a condition of operating pursuant to the unified
30 program elements specified in subdivision (c) of Section 25404
31 and any permit or authorization required under any local ordinance
32 or regulation relating to the generation or handling of hazardous
33 waste or hazardous materials.

34 (E) This subparagraph applies to unified program facilities
35 ~~which that~~ have existing, not yet expired, grants of authorization
36 for some, but not all, of the authorization requirements
37 encompassed in the unified program facility permit. When issuing
38 a unified program facility permit to such a unified program facility,
39 the unified program agency shall incorporate, by reference, into

1 the unified program facility permit any of the facility's existing,
2 not yet expired, grants of authorization.

3 (2) To the maximum extent feasible within statutory constraints,
4 the certified unified program agency, in conjunction with
5 participating agencies, shall consolidate, coordinate, and make
6 consistent any local or regional regulations, ordinances,
7 requirements, or guidance documents related to the implementation
8 of ~~the provisions specified in~~ subdivision (c) of Section 25404 or
9 pursuant to any regional or local ordinance or regulation pertaining
10 to hazardous waste or hazardous materials. This paragraph does
11 not affect the authority of a unified program agency with regard
12 to the preemption of the unified program agency's authority under
13 state law.

14 (3) The certified unified program agency, in conjunction with
15 participating agencies, shall develop and implement a single,
16 unified inspection and enforcement program to ensure coordinated,
17 efficient, and effective enforcement of ~~the provisions specified in~~
18 subdivision (c) of Section 25404, and any local ordinance or
19 regulation pertaining to the handling of hazardous waste or
20 hazardous materials.

21 (4) The certified unified program agency, in conjunction with
22 participating agencies, shall coordinate, to the maximum extent
23 feasible, the single, unified inspection and enforcement program
24 with the inspection and enforcement program of other federal,
25 state, regional, and local agencies ~~which~~ *that* affect facilities
26 regulated by the unified program. This paragraph does not prohibit
27 the unified program agencies, or any other agency, from conducting
28 inspections, or from undertaking any other enforcement-related
29 activity, without giving prior notice to the regulated entity, except
30 ~~where~~ *if* the prior notice is otherwise required by law.

31 (b) An employee or authorized representative of a unified
32 program agency or a state agency acting pursuant to this chapter
33 has the authority specified in Section 25185, with respect to the
34 premises of a handler, and in Section 25185.5, with respect to real
35 property ~~which~~ *that* is within 2,000 feet of the premises of a
36 handler, except that this authority shall include inspections
37 concerning hazardous material, in addition to hazardous waste.

38 (c) Each air quality management district or air pollution control
39 district, each publicly owned treatment works, and each office,
40 board, and department within the California Environmental

1 Protection Agency, shall coordinate, to the maximum extent
2 feasible, those aspects of its inspection and enforcement program
3 ~~which~~ *that* affect facilities regulated by the unified program with
4 the inspection and enforcement programs of each certified unified
5 program agency.

6 (d) The certified unified program agency, in conjunction with
7 participating agencies, may incorporate, as part of the unified
8 program within its jurisdiction, the implementation and
9 enforcement of laws ~~which~~ *that* the unified program agencies are
10 authorized to implement and enforce, other than those specified
11 in subdivision (c) of Section 25404, if that incorporation will not
12 impair the ability of the unified program agencies to fully
13 implement the requirements of subdivision (a).

14 (e) (1) The withdrawal of an application for a unified program
15 facility permit after it has been filed with the unified program
16 agency shall not, unless the unified program agency consents in
17 writing to the withdrawal, deprive the unified program agencies
18 of their authority to institute or continue a proceeding against the
19 applicant for the denial of the unified program facility permit upon
20 any ground provided by law, and ~~such a~~ *this* withdrawal shall not
21 affect the authority of the unified program agencies to institute or
22 continue a proceeding against the applicant pertaining to any
23 violation of the requirements specified in subdivision (c) of Section
24 25404 or of any local ordinance or regulation relating to the
25 generation or handling of hazardous waste or hazardous materials.

26 (2) The suspension, expiration, or forfeiture by operation of law
27 of a unified program facility permit, or its suspension, forfeiture,
28 or cancellation by the unified program agency or by order of a
29 court, or its surrender or attempted or actual transfer without the
30 written consent of the unified program agency shall not affect the
31 authority of the unified program agencies to institute or continue
32 a disciplinary proceeding against the holder of a unified program
33 facility permit upon any ground, or otherwise taking an action
34 against the holder of a unified program facility permit on these
35 grounds.

36 ~~SEC. 3.~~

37 *SEC. 6.* Section 25503.5 of the Health and Safety Code is
38 amended to read:

39 25503.5. (a) (1) A business, except as provided in subdivisions
40 (b), (c), and (d), shall establish and implement a business plan for

1 emergency response to a release or threatened release of a
2 hazardous material in accordance with the standards prescribed in
3 the regulations adopted pursuant to Section 25503, if the business
4 handles a hazardous material or a mixture containing a hazardous
5 material that has a quantity at any one time during the reporting
6 year that is any of the following:

7 (A) Except as provided in subparagraphs (C), (D), or (F), equal
8 to, or greater than, a total weight of 500 pounds or a total volume
9 of 55 gallons.

10 (B) Except as provided in subparagraphs (E) or (F), equal to,
11 or greater than, 200 cubic feet at standard temperature and pressure,
12 if the substance is compressed gas.

13 (C) The threshold planning quantity, under both of the following
14 conditions:

15 (i) The hazardous material is an extremely hazardous substance,
16 as defined in Section 355.61 of Title 40 of the Code of Federal
17 Regulations.

18 (ii) The threshold planning quantity for that extremely hazardous
19 substance listed in Appendices A and B of Part 355 (commencing
20 with Section 355.1) of Subchapter J of Chapter I of Title 40 of the
21 Code of Federal Regulations is less than 500 pounds.

22 (D) A total weight of 5,000 pounds, if the hazardous material
23 is a solid or liquid substance that is classified as a hazard for
24 purposes of Section 5194 of Title 8 of the California Code of
25 Regulations solely as an irritant or sensitizer, unless the
26 administering agency finds, and provides notice to the business
27 handling the product, that the handling of lesser quantities of that
28 hazardous material requires the submission of a business plan, or
29 any portion thereof, in response to public health, safety, or
30 environmental concerns.

31 (E) (i) A total of 1,000 cubic feet, if the hazardous material is
32 a gas at standard temperature and pressure and is classified as a
33 hazard for the purposes of Section 5194 of Title 8 of the California
34 Code of Regulations solely as a compressed gas, unless the
35 administering agency finds, and provides notice to the business
36 handling the product, that the handling of lesser quantities of that
37 hazardous material requires the submission of a business plan, or
38 any portion thereof, in response to public health, safety, or
39 environmental concerns.

1 (ii) The hazardous materials subject to this subparagraph include
2 a gas for which the only health and physical hazards are simple
3 asphyxiation and the release of pressure.

4 (iii) The hazardous materials subject to this subparagraph do
5 not include gases in a cryogenic state.

6 (F) If the substance is a radioactive material, it is handled in
7 quantities for which an emergency plan is required to be adopted
8 pursuant to Part 30 (commencing with Section 30.1), Part 40
9 (commencing with Section 40.1), or Part 70 (commencing with
10 Section 70.1), of Chapter 1 of Title 10 of the Code of Federal
11 Regulations, or pursuant to any regulations adopted by the state
12 in accordance with those regulations.

13 (2) In meeting the requirements of this subdivision, a business
14 may, if it elects to do so, use the format adopted pursuant to Section
15 25503.4.

16 (3) The administering agency shall make the findings required
17 by subparagraphs (D) and (E) of paragraph (1) in consultation with
18 the local fire chief.

19 (b) (1) Oxygen, nitrogen, and nitrous oxide, ordinarily
20 maintained by a physician, dentist, podiatrist, veterinarian, or
21 pharmacist, at his or her office or place of business, stored at each
22 office or place of business in quantities of not more than 1,000
23 cubic feet of each material at any one time, are exempt from this
24 section and from Section 25505. The administering agency may
25 require a one-time inventory of these materials for a fee not to
26 exceed fifty dollars (\$50) to pay for the costs incurred by the
27 agency in processing the inventory forms.

28 (2) (A) Lubricating oil is exempt from this section and Sections
29 25505 and 25509, for a single business facility, if the total volume
30 of each type of lubricating oil handled at that facility does not
31 exceed 55 gallons and the total volume of all types of lubricating
32 oil handled at that facility does not exceed 275 gallons, at any one
33 time.

34 (B) For purposes of this paragraph, “lubricating oil” means any
35 oil intended for use in an internal combustion crankcase, or the
36 transmission, gearbox, differential, or hydraulic system of an
37 automobile, bus, truck, vessel, airplane, heavy equipment, or other
38 machinery powered by an internal combustion or electric powered
39 engine. “Lubricating oil” does not include used oil, as defined in
40 subdivision (a) of Section 25250.1.

(c) (1) Hazardous material contained solely in a consumer product for direct distribution to, and use by, the general public is exempt from the business plan requirements of this article unless the administering agency has found, and has provided notice to the business handling the product, that the handling of certain quantities of the product requires the submission of a business plan, or any portion thereof, in response to public health, safety, or environmental concerns.

(2) In addition to the authority specified in paragraph (4), the administering agency may, in exceptional circumstances, following notice and public hearing, exempt from the inventory provisions of this article any hazardous substance specified in subdivision (q) of Section 25501 if the administering agency finds that the hazardous substance would not pose a present or potential danger to the environment or to human health and safety if the hazardous substance was released into the environment. The administering agency shall specify in writing the basis for granting any exemption under this paragraph. The administering agency shall send a notice to the agency within five days from the effective date of any exemption granted pursuant to this paragraph.

(3) The administering agency, upon application by a handler, may exempt the handler, under conditions that the administering agency determines to be proper, from any portion of the business plan, upon a written finding that the exemption would not pose a significant present or potential hazard to human health or safety or to the environment or affect the ability of the administering agency and emergency rescue personnel to effectively respond to the release of a hazardous material, and that there are unusual circumstances justifying the exemption. The administering agency shall specify in writing the basis for any exemption under this paragraph.

(4) The administering agency, upon application by a handler, may exempt a hazardous material from the inventory provisions of this article upon proof that the material does not pose a significant present or potential hazard to human health and safety or to the environment if released into the workplace or environment. The administering agency shall specify in writing the basis for any exemption under this paragraph.

(5) An administering agency shall exempt a business operating a farm for purposes of cultivating the soil or raising or harvesting

1 any agricultural or horticultural commodity from filing the
2 information in the business plan required by subdivisions (b) and
3 (c) of Section 25504 if all of the following requirements are met:

4 (A) The handler annually provides the inventory of information
5 required by Section 25509 to the county agricultural commissioner
6 before January 1 of each year.

7 (B) Each building in which hazardous materials subject to this
8 article are stored is posted with signs, in accordance with
9 regulations that the agency shall adopt, that provide notice of the
10 storage of any of the following:

11 (i) Pesticides.

12 (ii) Petroleum fuels and oil.

13 (iii) Types of fertilizers.

14 (C) Each county agricultural commissioner forwards the
15 inventory to the administering agency within 30 days from the
16 date of receipt of the inventory.

17 (6) The administering agency shall exempt a business operating
18 an unstaffed remote facility located in an isolated sparsely
19 populated area from the hazardous materials business plan and
20 inventory requirements of this article if the facility is not otherwise
21 subject to the requirements of applicable federal law, and all of
22 the following requirements are met:

23 (A) The types and quantities of materials onsite are limited to
24 one or more of the following:

25 (i) Five hundred standard cubic feet of compressed inert gases
26 (asphyxiation and pressure hazards only).

27 (ii) Five hundred gallons of combustible liquid used as a fuel
28 source.

29 (iii) Two hundred gallons of corrosive liquids used as
30 electrolytes in closed containers.

31 (iv) Five hundred gallons of lubricating and hydraulic fluids.

32 (v) One thousand two hundred gallons of flammable gas used
33 as a fuel source.

34 (B) The facility is secured and not accessible to the public.

35 (C) Warning signs are posted and maintained for hazardous
36 materials pursuant to the California Fire Code.

37 (D) A one-time notification and inventory are provided to the
38 administering agency along with a processing fee in lieu of the
39 existing fee. The fee shall not exceed the actual cost of processing

1 the notification and inventory, including a verification inspection,
2 if necessary.

3 (E) If the information contained in the initial notification or
4 inventory changes and the time period of the change is longer than
5 30 days, the notification or inventory shall be resubmitted within
6 30 days to the administering agency to reflect the change, along
7 with a processing fee, in lieu of the existing fee, that does not
8 exceed the actual cost of processing the amended notification or
9 inventory, including a verification inspection, if necessary.

10 (F) The administering agency shall forward a copy of the
11 notification and inventory to those agencies that share responsibility
12 for emergency response.

13 (G) The administering agency may require an unstaffed remote
14 facility to submit a hazardous materials business plan and inventory
15 in accordance with this article if the agency finds that special
16 circumstances exist such that development and maintenance of the
17 business plan and inventory are necessary to protect public health
18 and safety and the environment.

19 (d) On-premise use, storage, or both, of propane in an amount
20 not to exceed 300 gallons that is for the sole purpose of heating
21 the employee working areas within that business is exempt from
22 this section, unless the administering agency finds, and provides
23 notice to the business handling the propane, that the handling of
24 the on-premise propane requires the submission of a business plan,
25 or any portion thereof, in response to public health, safety, or
26 environmental concerns.

27 (e) The administering agency shall provide all information
28 obtained from completed inventory forms, upon request, to
29 emergency rescue personnel on a 24-hour basis.

30 (f) The administering agency shall adopt procedures to provide
31 for public input when approving any applications submitted
32 pursuant to paragraph (3) or (4) of subdivision (c).

33 ~~SEC. 4. Section 13385 of the Water Code is amended to read:~~

34 ~~13385. (a) A person who violates any of the following is liable~~
35 ~~civilly in accordance with this section:~~

36 ~~(1) Section 13375 or 13376.~~

37 ~~(2) A waste discharge requirement or dredged or fill material~~
38 ~~permit issued pursuant to this chapter or any water quality~~
39 ~~certification issued pursuant to Section 13160.~~

40 ~~(3) A requirement established pursuant to Section 13383.~~

1 ~~(4) An order or prohibition issued pursuant to Section 13243 or~~
2 ~~Article 1 (commencing with Section 13300) of Chapter 5, if the~~
3 ~~activity subject to the order or prohibition is subject to regulation~~
4 ~~under this chapter.~~

5 ~~(5) A requirement of Section 301, 302, 306, 307, 308, 318, 401,~~
6 ~~or 405 of the federal Clean Water Act (33 U.S.C. Sec. 1311, 1312,~~
7 ~~1316, 1317, 1318, 1341, or 1342), as amended.~~

8 ~~(6) A requirement imposed in a pretreatment program approved~~
9 ~~pursuant to waste discharge requirements issued under Section~~
10 ~~13377 or approved pursuant to a permit issued by the administrator.~~

11 ~~(b) (1) Civil liability may be imposed by the superior court in~~
12 ~~an amount not to exceed the sum of both of the following:~~

13 ~~(A) Twenty-five thousand dollars (\$25,000) for each day in~~
14 ~~which the violation occurs.~~

15 ~~(B) If there is a discharge, any portion of which is not~~
16 ~~susceptible to cleanup or is not cleaned up, and the volume~~
17 ~~discharged but not cleaned up exceeds 1,000 gallons, an additional~~
18 ~~liability not to exceed twenty-five dollars (\$25) multiplied by the~~
19 ~~number of gallons by which the volume discharged but not cleaned~~
20 ~~up exceeds 1,000 gallons.~~

21 ~~(2) The Attorney General, upon request of a regional board or~~
22 ~~the state board, shall petition the superior court to impose the~~
23 ~~liability.~~

24 ~~(c) Civil liability may be imposed administratively by the state~~
25 ~~board or a regional board pursuant to Article 2.5 (commencing~~
26 ~~with Section 13323) of Chapter 5 in an amount not to exceed the~~
27 ~~sum of both of the following:~~

28 ~~(1) Ten thousand dollars (\$10,000) for each day in which the~~
29 ~~violation occurs.~~

30 ~~(2) If there is a discharge, any portion of which is not susceptible~~
31 ~~to cleanup or is not cleaned up, and the volume discharged but not~~
32 ~~cleaned up exceeds 1,000 gallons, an additional liability not to~~
33 ~~exceed ten dollars (\$10) multiplied by the number of gallons by~~
34 ~~which the volume discharged but not cleaned up exceeds 1,000~~
35 ~~gallons.~~

36 ~~(d) For purposes of subdivisions (b) and (c), “discharge”~~
37 ~~includes any discharge to navigable waters of the United States;~~
38 ~~any introduction of pollutants into a publicly owned treatment~~
39 ~~works, or any use or disposal of sewage sludge.~~

~~(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.~~

~~(f) (1) Except as provided in paragraph (2), for the purposes of this section, a single operational upset that leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.~~

~~(2) (A) For the purposes of subdivisions (h) and (i), a single operational upset in a wastewater treatment unit that treats wastewater using a biological treatment process shall be treated as a single violation, even if the operational upset results in violations of more than one effluent limitation and the violations continue for a period of more than one day, if all of the following apply:~~

~~(i) The discharger demonstrates all of the following:~~

~~(I) The upset was not caused by wastewater treatment operator error and was not due to discharger negligence.~~

~~(II) But for the operational upset of the biological treatment process, the violations would not have occurred nor would they have continued for more than one day.~~

~~(III) The discharger carried out all reasonable and immediately feasible actions to reduce noncompliance with the applicable effluent limitations.~~

~~(ii) The discharger is implementing an approved pretreatment program, if so required by federal or state law.~~

~~(B) Subparagraph (A) only applies to violations that occur during a period for which the regional board has determined that violations are unavoidable, but in no case may that period exceed 30 days.~~

1 ~~(g) Remedies under this section are in addition to, and do not~~
2 ~~supersede or limit, any other remedies, civil or criminal, except~~
3 ~~that no liability shall be recoverable under Section 13261, 13265,~~
4 ~~13268, or 13350 for violations for which liability is recovered~~
5 ~~under this section.~~

6 ~~(h) (1) Notwithstanding any other provision of this division,~~
7 ~~and except as provided in subdivisions (j), (k), and (l), a mandatory~~
8 ~~minimum penalty of three thousand dollars (\$3,000) shall be~~
9 ~~assessed for each serious violation.~~

10 ~~(2) For the purposes of this section, a “serious violation” means~~
11 ~~any waste discharge that violates the effluent limitations contained~~
12 ~~in the applicable waste discharge requirements for a Group II~~
13 ~~pollutant, as specified in Appendix A to Section 123.45 of Title~~
14 ~~40 of the Code of Federal Regulations, by 20 percent or more or~~
15 ~~for a Group I pollutant, as specified in Appendix A to Section~~
16 ~~123.45 of Title 40 of the Code of Federal Regulations, by 40~~
17 ~~percent or more.~~

18 ~~(i) (1) Notwithstanding any other provision of this division,~~
19 ~~and except as provided in subdivisions (j), (k), and (l), a mandatory~~
20 ~~minimum penalty of three thousand dollars (\$3,000) shall be~~
21 ~~assessed for each violation if the person does any of the following~~
22 ~~four or more times in any period of six consecutive months, except~~
23 ~~that the requirement to assess the mandatory minimum penalty~~
24 ~~shall not be applicable to the first three violations:~~

25 ~~(A) Violates a waste discharge requirement effluent limitation.~~

26 ~~(B) Fails to file a report pursuant to Section 13260.~~

27 ~~(C) Files an incomplete report pursuant to Section 13260.~~

28 ~~(D) Violates a toxicity effluent limitation contained in the~~
29 ~~applicable waste discharge requirements where the waste discharge~~
30 ~~requirements do not contain pollutant-specific effluent limitations~~
31 ~~for toxic pollutants.~~

32 ~~(2) For the purposes of this section, a “period of six consecutive~~
33 ~~months” means the period commencing on the date that one of the~~
34 ~~violations described in this subdivision occurs and ending 180~~
35 ~~days after that date.~~

36 ~~(j) Subdivisions (h) and (i) do not apply to any of the following:~~

37 ~~(1) A violation caused by one or any combination of the~~
38 ~~following:~~

39 ~~(A) An act of war.~~

~~(B) An unanticipated, grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.~~

~~(C) An intentional act of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.~~

~~(D) (i) The operation of a new or reconstructed wastewater treatment unit during a defined period of adjusting or testing, not to exceed 90 days for a wastewater treatment unit that relies on a biological treatment process and not to exceed 30 days for any other wastewater treatment unit, if all of the following requirements are met:~~

~~(I) The discharger has submitted to the regional board, at least 30 days in advance of the operation, an operations plan that describes the actions the discharger will take during the period of adjusting and testing, including steps to prevent violations and identifies the shortest reasonable time required for the period of adjusting and testing, not to exceed 90 days for a wastewater treatment unit that relies on a biological treatment process and not to exceed 30 days for any other wastewater treatment unit.~~

~~(II) The regional board has not objected in writing to the operations plan.~~

~~(III) The discharger demonstrates that the violations resulted from the operation of the new or reconstructed wastewater treatment unit and that the violations could not have reasonably been avoided.~~

~~(IV) The discharger demonstrates compliance with the operations plan.~~

~~(V) In the case of a reconstructed wastewater treatment unit, the unit relies on a biological treatment process that is required to be out of operation for at least 14 days in order to perform the reconstruction, or the unit is required to be out of operation for at least 14 days and, at the time of the reconstruction, the cost of reconstructing the unit exceeds 50 percent of the cost of replacing the wastewater treatment unit.~~

~~(ii) For the purposes of this section, “wastewater treatment unit” means a component of a wastewater treatment plant that performs a designated treatment function.~~

1 ~~(2) (A) Except as provided in subparagraph (B), a violation of~~
2 ~~an effluent limitation where the waste discharge is in compliance~~
3 ~~with either a cease and desist order issued pursuant to Section~~
4 ~~13301 or a time schedule order issued pursuant to Section 13300,~~
5 ~~if all of the following requirements are met:~~

6 ~~(i) The cease and desist order or time schedule order is issued~~
7 ~~after January 1, 1995, but not later than July 1, 2000, specifies the~~
8 ~~actions that the discharger is required to take in order to correct~~
9 ~~the violations that would otherwise be subject to subdivisions (h)~~
10 ~~and (i), and the date by which compliance is required to be achieved~~
11 ~~and, if the final date by which compliance is required to be~~
12 ~~achieved is later than one year from the effective date of the cease~~
13 ~~and desist order or time schedule order, specifies the interim~~
14 ~~requirements by which progress toward compliance will be~~
15 ~~measured and the date by which the discharger will be in~~
16 ~~compliance with each interim requirement.~~

17 ~~(ii) The discharger has prepared and is implementing in a timely~~
18 ~~and proper manner, or is required by the regional board to prepare~~
19 ~~and implement, a pollution prevention plan that meets the~~
20 ~~requirements of Section 13263.3.~~

21 ~~(iii) The discharger demonstrates that it has carried out all~~
22 ~~reasonable and immediately feasible actions to reduce~~
23 ~~noncompliance with the waste discharge requirements applicable~~
24 ~~to the waste discharge and the executive officer of the regional~~
25 ~~board concurs with the demonstration.~~

26 ~~(B) Subdivisions (h) and (i) shall become applicable to a waste~~
27 ~~discharge on the date the waste discharge requirements applicable~~
28 ~~to the waste discharge are revised and reissued pursuant to Section~~
29 ~~13380, unless the regional board does all of the following on or~~
30 ~~before that date:~~

31 ~~(i) Modifies the requirements of the cease and desist order or~~
32 ~~time schedule order as may be necessary to make it fully consistent~~
33 ~~with the reissued waste discharge requirements.~~

34 ~~(ii) Establishes in the modified cease and desist order or time~~
35 ~~schedule order a date by which full compliance with the reissued~~
36 ~~waste discharge requirements shall be achieved. For the purposes~~
37 ~~of this subdivision, the regional board may not establish this date~~
38 ~~later than five years from the date the waste discharge requirements~~
39 ~~were required to be reviewed pursuant to Section 13380. If the~~
40 ~~reissued waste discharge requirements do not add new effluent~~

1 limitations or do not include effluent limitations that are more
2 stringent than those in the original waste discharge requirements;
3 the date shall be the same as the final date for compliance in the
4 original cease and desist order or time schedule order or five years
5 from the date that the waste discharge requirements were required
6 to be reviewed pursuant to Section 13380, whichever is earlier.

7 (iii) Determines that the pollution prevention plan required by
8 clause (ii) of subparagraph (A) is in compliance with the
9 requirements of Section 13263.3 and that the discharger is
10 implementing the pollution prevention plan in a timely and proper
11 manner.

12 (3) A violation of an effluent limitation where the waste
13 discharge is in compliance with either a cease and desist order
14 issued pursuant to Section 13301 or a time schedule order issued
15 pursuant to Section 13300 or 13308, if all of the following
16 requirements are met:

17 (A) The cease and desist order or time schedule order is issued
18 on or after July 1, 2000, and specifies the actions that the discharger
19 is required to take in order to correct the violations that would
20 otherwise be subject to subdivisions (h) and (i):

21 (B) The regional board finds that, for one of the following
22 reasons, the discharger is not able to consistently comply with one
23 or more of the effluent limitations established in the waste
24 discharge requirements applicable to the waste discharge:

25 (i) The effluent limitation is a new, more stringent, or modified
26 regulatory requirement that has become applicable to the waste
27 discharge after the effective date of the waste discharge
28 requirements and after July 1, 2000, new or modified control
29 measures are necessary in order to comply with the effluent
30 limitation, and the new or modified control measures cannot be
31 designed, installed, and put into operation within 30 calendar days.

32 (ii) New methods for detecting or measuring a pollutant in the
33 waste discharge demonstrate that new or modified control measures
34 are necessary in order to comply with the effluent limitation and
35 the new or modified control measures cannot be designed, installed,
36 and put into operation within 30 calendar days.

37 (iii) Unanticipated changes in the quality of the municipal or
38 industrial water supply available to the discharger are the cause
39 of unavoidable changes in the composition of the waste discharge;
40 the changes in the composition of the waste discharge are the cause

1 of the inability to comply with the effluent limitation, no alternative
2 water supply is reasonably available to the discharger, and new or
3 modified measures to control the composition of the waste
4 discharge cannot be designed, installed, and put into operation
5 within 30 calendar days.

6 (iv) The discharger is a publicly owned treatment works located
7 in Orange County that is unable to meet effluent limitations for
8 biological oxygen demand, suspended solids, or both, because the
9 publicly owned treatment works meets all of the following criteria:

10 (I) Was previously operating under modified secondary
11 treatment requirements pursuant to Section 301(h) of the federal
12 Clean Water Act (33 U.S.C. Sec. 1311(h)).

13 (II) Did vote on July 17, 2002, not to apply for a renewal of the
14 modified secondary treatment requirements.

15 (III) Is in the process of upgrading its treatment facilities to
16 meet the secondary treatment standards required by Section
17 301(b)(1)(B) of the federal Clean Water Act (33 U.S.C. Sec.
18 1311(b)(1)(B)).

19 (C) (i) The regional board establishes a time schedule for
20 bringing the waste discharge into compliance with the effluent
21 limitation that is as short as possible, taking into account the
22 technological, operational, and economic factors that affect the
23 design, development, and implementation of the control measures
24 that are necessary to comply with the effluent limitation. Except
25 as provided in clause (ii), for the purposes of this subdivision, the
26 time schedule shall not exceed five years in length.

27 (ii) (I) For purposes of the upgrade described in subclause (III)
28 of clause (iv) of subparagraph (B), the time schedule shall not
29 exceed 10 years in length.

30 (II) Following a public hearing, and upon a showing that the
31 discharger is making diligent progress toward bringing the waste
32 discharge into compliance with the effluent limitation, the regional
33 board may extend the time schedule for an additional period not
34 exceeding five years in length, if the discharger demonstrates that
35 the additional time is necessary to comply with the effluent
36 limitation. This subclause does not apply to a time schedule
37 described in subclause (I).

38 (iii) If the time schedule exceeds one year from the effective
39 date of the order, the schedule shall include interim requirements

1 and the dates for their achievement. The interim requirements shall
2 include both of the following:

3 (I) Effluent limitations for the pollutant or pollutants of concern.

4 (II) Actions and milestones leading to compliance with the
5 effluent limitation.

6 (D) The discharger has prepared and is implementing in a timely
7 and proper manner, or is required by the regional board to prepare
8 and implement, a pollution prevention plan pursuant to Section
9 13263.3.

10 (k) (1) In lieu of assessing all or a portion of the mandatory
11 minimum penalties pursuant to subdivisions (h) and (i) against a
12 publicly owned treatment works serving a small community, the
13 state board or the regional board may elect to require the publicly
14 owned treatment works to spend an equivalent amount toward the
15 completion of a compliance project proposed by the publicly owned
16 treatment works, if the state board or the regional board finds all
17 of the following:

18 (A) The compliance project designed to correct the violations
19 within five years.

20 (B) The compliance project is in accordance with the
21 enforcement policy of the state board, excluding any provision in
22 the policy that is inconsistent with this section.

23 (C) The publicly owned treatment works has prepared a
24 financing plan to complete the compliance project.

25 (2) For the purposes of this subdivision, “a publicly owned
26 treatment works serving a small community” means a publicly
27 owned treatment works serving a population of 20,000 persons or
28 fewer or a rural county, with a financial hardship as determined
29 by the state board after considering such factors as median income
30 of the residents, rate of unemployment, or low population density
31 in the service area of the publicly owned treatment works.

32 (l) (1) In lieu of assessing penalties pursuant to subdivision (h)
33 or (i), the state board or the regional board, with the concurrence
34 of the discharger, may direct a portion of the penalty amount to
35 be expended on a supplemental environmental project in
36 accordance with the enforcement policy of the state board. If the
37 penalty amount exceeds fifteen thousand dollars (\$15,000), the
38 portion of the penalty amount that may be directed to be expended
39 on a supplemental environmental project may not exceed fifteen

1 thousand dollars (\$15,000) plus 50 percent of the penalty amount
2 that exceeds fifteen thousand dollars (\$15,000).

3 (2) For the purposes of this section, a “supplemental
4 environmental project” means an environmentally beneficial project
5 that a person agrees to undertake, with the approval of the regional
6 board, that would not be undertaken in the absence of an
7 enforcement action under this section.

8 (3) This subdivision applies to the imposition of penalties
9 pursuant to subdivision (h) or (i) on or after January 1, 2003,
10 without regard to the date on which the violation occurs.

11 (m) The Attorney General, upon request of a regional board or
12 the state board, shall petition the appropriate court to collect any
13 liability or penalty imposed pursuant to this section. Any person
14 who fails to pay on a timely basis any liability or penalty imposed
15 under this section shall be required to pay, in addition to that
16 liability or penalty, interest, attorney’s fees, costs for collection
17 proceedings, and a quarterly nonpayment penalty for each quarter
18 during which the failure to pay persists. The nonpayment penalty
19 shall be in an amount equal to 20 percent of the aggregate amount
20 of the person’s penalty and nonpayment penalties that are unpaid
21 as of the beginning of the quarter.

22 (n) (1) Subject to paragraph (2), funds collected pursuant to
23 this section shall be deposited in the State Water Pollution Cleanup
24 and Abatement Account.

25 (2) (A) Notwithstanding any other provision of law, moneys
26 collected for a violation of a water quality certification in
27 accordance with paragraph (2) of subdivision (a) or for a violation
28 of Section 401 of the federal Clean Water Act (33 U.S.C. See.
29 1341) in accordance with paragraph (5) of subdivision (a) shall be
30 deposited in the Waste Discharge Permit Fund and separately
31 accounted for in that fund.

32 (B) The funds described in subparagraph (A) shall be expended
33 by the state board, upon appropriation by the Legislature, to assist
34 regional boards, and other public agencies with authority to clean
35 up waste or abate the effects of the waste, in cleaning up or abating
36 the effects of the waste on waters of the state or for the purposes
37 authorized in Section 13443.

38 (o) The state board shall continuously report and update
39 information on its Internet Web site, but at a minimum, annually

1 on or before January 1, regarding its enforcement activities. The
2 information shall include all of the following:

3 (1) A compilation of the number of violations of waste discharge
4 requirements in the previous calendar year, including stormwater
5 enforcement violations.

6 (2) A record of the formal and informal compliance and
7 enforcement actions taken for each violation, including stormwater
8 enforcement actions.

9 (3) An analysis of the effectiveness of current enforcement
10 policies, including mandatory minimum penalties.

11 (p) The amendments made to subdivisions (f), (h), (i), and (j)
12 during the second year of the 2001-02 Regular Session apply only
13 to violations that occur on or after January 1, 2003.

14 *SEC. 7. Section 25509 of the Health and Safety Code is*
15 *amended to read:*

16 25509. (a) The annual inventory form shall include, but shall
17 not be limited to, information on all of the following which are
18 handled in quantities equal to or greater than the quantities
19 specified in subdivision (a) of Section 25503.5:

20 (1) A listing of the chemical name and common names of every
21 hazardous substance or chemical product handled by the business.

22 (2) The category of waste, including the general chemical and
23 mineral composition of the waste listed by probable maximum
24 and minimum concentrations, of every hazardous waste handled
25 by the business.

26 (3) A listing of the chemical name and common names of every
27 other hazardous material or mixture containing a hazardous
28 material handled by the business ~~which~~ *that* is not otherwise listed
29 pursuant to paragraph (1) or (2).

30 (4) The maximum amount of each hazardous material or mixture
31 containing a hazardous material disclosed in paragraphs (1), (2),
32 and (3) ~~which~~ *that* is handled at any one time by the business over
33 the course of the year.

34 (5) Sufficient information on how and where the hazardous
35 materials disclosed in paragraphs (1), (2), and (3) are handled by
36 the business to allow fire, safety, health, and other appropriate
37 personnel to prepare adequate emergency responses to potential
38 releases of the hazardous materials.

39 (6) The SIC Code number of the business if applicable.

(7) The name and telephone number of the person representing the business and able to assist emergency personnel in the event of an emergency involving the business during nonbusiness hours.

(b) If the local fire chief requires the business to comply with the requirements of subdivision (c) of Section ~~80.103~~ 2701.5.2 of the ~~Uniform~~ California Fire Code, as adopted by the State Fire Marshal pursuant to Section 13143.9, the business shall also file the addendum required by Section 25503.9 with the administering agency.

(c) The administering agency may permit the reporting of the amount of hazardous material under this section by ranges, rather than a specific amount, as long as those ranges provide the information necessary to meet the needs of emergency rescue personnel, to determine the potential hazard from a release of the materials, and meets the purposes of this chapter.

(d) (1) Except as provided in subdivision (e), the annual inventory form required by this section shall also include all inventory information required by Section 11022 of Title 42 of the United States Code, as that section read on January 1, 1989, or as it may be subsequently amended.

(2) The agency may adopt or amend existing regulations specifying the inventory information required by this subdivision.

(e) If, pursuant to federal law or regulation, as it currently exists or as it may be amended, there is a determination that the inventory information required by subdivisions (a) and (c) is substantially equivalent to the inventory information required under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Sec. 11001 et seq.), the requirements of subdivision (d) shall not apply.

SEC. 8. Section 25509.2 of the Health and Safety Code is amended to read:

25509.2. (a) The Legislature hereby finds and declares all of the following:

(1) Persons attempting to do business in this state are increasingly experiencing excessive and duplicative regulatory requirements at different levels of government.

(2) To streamline and ease the regulatory burdens of doing business in this state, compliance with the hazardous materials release response plans and inventory requirements of this chapter shall also suffice to meet the requirements of the

1 ~~Uniform~~ California Fire Code with regard to the requirement for
2 a hazardous materials management plan and hazardous materials
3 inventory statement, as set forth in ~~Article 80 Chapter 27~~ of the
4 ~~Uniform~~ California Fire Code and its appendices.

5 (3) Businesses which are required to comply with this chapter
6 do so on one form, with one fee and one inspection. The
7 administering agency shall forward the data collected, within 15
8 days of receipt and confirmation, with other local agencies in a
9 format easily interpreted by those agencies with shared
10 responsibilities for protection of the public health and safety and
11 the environment.

12 (4) Enforcement of this chapter and the ~~Uniform~~ California Fire
13 Code shall be coordinated.

14 (b) Notwithstanding Section 13143.9, and any standards and
15 regulations adopted pursuant to that section, ~~any a business which~~
16 *that* files the annual inventory form in compliance with this article,
17 including the addendum adopted pursuant to Section 25503.9, as
18 required by the local fire chief to comply with ~~subdivision (c) of~~
19 ~~Section 80.103 2701.5.2~~ of the ~~Uniform~~ California Fire Code, as
20 adopted by the State Fire Marshal pursuant to Section 13143.9,
21 shall be deemed to have met the requirements of ~~subdivision (c)~~
22 of ~~Section 80.103 2701.5.2~~ of the ~~Uniform~~ California Fire Code,
23 as adopted by the State Fire Marshal pursuant to Section 13143.9.

24 (c) Notwithstanding Section 13143.9, and any standards and
25 regulations adopted pursuant to that section, ~~any a business which~~
26 *that* establishes and maintains a business plan for emergency
27 response to a release or a threatened release of a hazardous material
28 in accordance with Section 25503.5, shall be deemed to have met
29 the requirements of ~~subdivision (b) of~~ Section ~~80.103 2701.5.1~~ of
30 the ~~Uniform~~ California Fire Code, as adopted by the State Fire
31 Marshal pursuant to Section 13143.9.

32 (d) Except for the addendum required by the local fire chief,
33 the administering agency shall be the sole enforcement agency for
34 purposes of determining compliance pursuant to subdivisions (b)
35 and (c).

36 (e) Except as otherwise expressly provided in this section, this
37 section does not affect or otherwise limit the authority of the local
38 fire chief to enforce the ~~Uniform~~ California Fire Code.

In order to ensure that the hazardous waste laws and regulations are fully complied with as soon as possible, and to make other changes relating to emergency response, the handling of hazardous materials, and the enforcement of waste discharge requirements, *materials, and the unified program*, thereby protecting the public health and safety and the environment, it is necessary that this act take effect immediately.

CORRECTIONS:

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